

PETITION FOR WRIT OF HABEAS CORPUS: 28 USC §2254 (Rev. 9/10)  
ADOPTED BY ALL FEDERAL COURTS IN TEXAS

United States District Court  
Southern District of Texas  
FILED

OCT 11 2013

David J. Bradley, Clerk of Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

B-13-190

PETITION FOR A WRIT OF HABEAS CORPUS BY  
A PERSON IN STATE CUSTODY

SCOTT WILLIAM HESS

PETITIONER

(Full name of Petitioner)

GARZA EAST UNIT.  
BEEVILLE, TX.

CURRENT PLACE OF CONFINEMENT

vs.

01841004

PRISONER ID NUMBER

WARDEN GIVENS

RESPONDENT

(Name of TDCJ Director, Warden, Jailor, or  
authorized person having custody of Petitioner)

CASE NUMBER

(Supplied by the District Court Clerk)

INSTRUCTIONS - READ CAREFULLY

1. The petition must be legibly handwritten or typewritten and signed and dated by the petitioner, under penalty of perjury. Any false statement of an important fact may lead to prosecution for perjury. Answer all questions in the proper space on the form.
2. Additional pages are not allowed except in answer to questions 11 and 20. Do not cite legal authorities. Any additional arguments or facts you want to present must be in a separate memorandum. The petition, including attachments, may not exceed 20 pages.
3. Receipt of the \$5.00 filing fee or a grant of permission to proceed *in forma pauperis* must occur before the court will consider your petition.
4. If you do not have the necessary filing fee, you may ask permission to proceed *in forma pauperis*. To proceed *in forma pauperis*, (1) you must sign the declaration provided with this petition to show that you cannot prepay the fees and costs, and (2) if you are confined in TDCJ-CID, you must send in a certified *In Forma Pauperis* Data Sheet form from the institution in which you are confined. If you are in an institution other than TDCJ-CID, you must send in a certificate completed by an authorized officer at your institution certifying the amount of money you have on deposit at that institution. If you have access or have had access to enough funds to pay the filing fee, then you must pay the filing fee.

5. Only judgments entered by one court may be challenged in a single petition. A separate petition must be filed to challenge a judgment entered by a different state court.
6. Include all of your grounds for relief and all of the facts that support each ground for relief in this petition.
7. Mail the completed petition and one copy to the U. S. District Clerk. The "Venue List" in your unit law library lists all of the federal courts in Texas, their divisions, and the addresses for the clerk's offices. The proper court will be the federal court in the division and district in which you were convicted (for example, a Dallas County conviction is in the Northern District of Texas, Dallas Division) or where you are now in custody (for example, the Huntsville units are in the Southern District of Texas, Houston Division).
8. Failure to notify the court of your change of address could result in the dismissal of your case.

### PETITION

**What are you challenging?** (Check all that apply)

- ☒ A judgment of conviction or sentence, (Answer Questions 1-4, 5-12 & 20-25)  
probation or deferred-adjudication probation.
- ☐ A parole revocation proceeding. (Answer Questions 1-4, 13-14 & 20-25)
- ☐ A disciplinary proceeding. (Answer Questions 1-4, 15-19 & 20-25)
- ☐ Other: \_\_\_\_\_ (Answer Questions 1-4, 10-11 & 20-25)

**All petitioners must answer questions 1-4:**

**Note:** In answering questions 1-4, you must give information about the conviction for the sentence you are presently serving, even if you are challenging a prison disciplinary action. (Note: If you are challenging a prison disciplinary action, do not answer questions 1-4 with information about the disciplinary case. Answer these questions about the conviction for the sentence you are presently serving.) Failure to follow this instruction may result in a delay in processing your case.

1. Name and location of the court (district and county) that entered the judgment of conviction and sentence that you are presently serving or that is under attack: 197TH DISTRICT  
COURT - CAMERON COUNTY, TX.
2. Date of judgment of conviction: OCTOBER 10, 2012
3. Length of sentence: 10 YEARS
4. Identify the docket numbers (if known) and all crimes of which you were convicted that you wish to challenge in this habeas action: 2012-DCR-1617-C

**Judgment of Conviction or Sentence, Probation or Deferred-Adjudication Probation:**

5. What was your plea? (Check one) ☐ Not Guilty ☒ Guilty ☐ Nolo Contendere

6. Kind of trial: (Check one) ☐ Jury ☒ Judge Only (OPEN PLEA)

7. Did you testify at trial? ☐ Yes ☒ No

8. Did you appeal the judgment of conviction? ☐ Yes ☒ No

9. If you did appeal, in what appellate court did you file your direct appeal? N.A.

\_\_\_\_\_  
Cause Number (if known): \_\_\_\_\_

What was the result of your direct appeal (affirmed, modified or reversed)? \_\_\_\_\_

What was the date of that decision? \_\_\_\_\_

If you filed a petition for discretionary review after the decision of the court of appeals, answer the following:

Grounds raised: \_\_\_\_\_

Result: \_\_\_\_\_

Date of result: \_\_\_\_\_ Cause Number (if known): \_\_\_\_\_

If you filed a petition for a writ of certiorari with the United States Supreme Court, answer the following:

Result: \_\_\_\_\_

Date of result: \_\_\_\_\_

10. Other than a direct appeal, have you filed any petitions, applications or motions from this judgment in any court, state or federal? This includes any state applications for a writ of habeas corpus that you may have filed. ☒ Yes ☐ No

11. If your answer to 10 is "Yes," give the following information:

Name of court: 197 TH DISTRICT COURT - CAMERON COUNTY

Nature of proceeding: WRIT OF HABEAS CORPUS - 11-07

Cause number (if known): 2012-DCA-1617-C

Date (month, day and year) you filed the petition, application or motion as shown by a file-stamped date from the particular court: 9-11-13

Grounds raised: INEFFECTIVE ASSISTANCE OF COUNSEL - INVOLUNTARY PLEA

Date of final decision: 9-17-2013

What was the decision? DENIED

Name of court that issued the final decision: 197 TH DISTRICT COURT CAMERON COUNTY

As to any second petition, application or motion, give the same information:

Name of court: \_\_\_\_\_

Nature of proceeding: \_\_\_\_\_

Cause number (if known): \_\_\_\_\_

Date (month, day and year) you filed the petition, application or motion as shown by a file-stamped date from the particular court: \_\_\_\_\_

Grounds raised: \_\_\_\_\_

Date of final decision: \_\_\_\_\_

What was the decision? \_\_\_\_\_

Name of court that issued the final decision: \_\_\_\_\_

*If you have filed more than two petitions, applications or motions, please attach an additional sheet of paper and give the same information about each petition, application or motion.*

12. Do you have any future sentence to serve after you finish serving the sentence you are attacking in this petition? ☐ Yes ☒ No

(a) If your answer is "Yes," give the name and location of the court that imposed the sentence to be served in the future: \_\_\_\_\_

(b) Give the date and length of the sentence to be served in the future: \_\_\_\_\_

- (c) Have you filed, or do you intend to file, any petition attacking the judgment for the sentence you must serve in the future? ☐ Yes ☐ No

**Parole Revocation:**

13. Date and location of your parole revocation: \_\_\_\_\_
14. Have you filed any petitions, applications or motions in any state or federal court challenging your parole revocation? ☐ Yes ☐ No

If your answer is "Yes," complete Question 11 above regarding your parole revocation.

**Disciplinary Proceedings:**

15. For your original conviction, was there a finding that you used or exhibited a deadly weapon?  
☐ Yes ☐ No
16. Are you eligible for release on mandatory supervision? ☐ Yes ☐ No
17. Name and location of the TDCJ Unit where you were found guilty of the disciplinary violation:  
\_\_\_\_\_

Disciplinary case number: \_\_\_\_\_

What was the nature of the disciplinary charge against you? \_\_\_\_\_

18. Date you were found guilty of the disciplinary violation: \_\_\_\_\_

Did you lose previously earned good-time days? ☐ Yes ☐ No

If your answer is "Yes," provide the exact number of previously earned good-time days that were forfeited by the disciplinary hearing officer as a result of your disciplinary hearing:  
\_\_\_\_\_

Identify all other punishment imposed, including the length of any punishment, if applicable, and any changes in custody status:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

19. Did you appeal the finding of guilty through the prison or TDCJ grievance procedure?  
☐ Yes ☐ No

If your answer to Question 19 is "Yes," answer the following:

Step 1 Result: \_\_\_\_\_

Date of Result: \_\_\_\_\_

Step 2 Result: \_\_\_\_\_

Date of Result: \_\_\_\_\_

**All petitioners must answer the remaining questions:**

20. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting them.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

- A. GROUND ONE: INEFFECTIVE ASSISTANCE OF  
COUNSEL - INVOLUNTARY PLEA

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

COURT APPOINTED ATTORNEY LED ME TO BELIEVE  
THAT I WOULD RECIEVE PROBATION IF I  
TURNEED DOWN A 5 YEAR PLEA BARGAIN FROM  
THE STATE AND MAKE A "COLD PLEA" BEFORE  
THE JUDGE.

- B. GROUND TWO: CRIMINAL HISTORY USED  
AGAINST ME - STRUCTURAL ERROR

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

MY CRIMINAL HISTORY AND EVEN MY  
ARREST HISTORY (NOT CONVICTIONS) WERE  
USED AGAINST ME AND INFLUENCED THE  
PLEA BARGAIN OFFER AND AT  
SENTANCING... INFLUENCING MY  
DEBCISION TO PLEAD GUILTY TO RECIEVE  
A LESSER SENTANCE - WHICH I DID NOT.  
THIS IS GROUNDS <sup>-6-</sup> FOR AUTOMATIC  
REVERSAL.

C. GROUND THREE: INEFFECTIVE ASSISTANCE OF COUNSEL - NO M.S.O. ORDERED

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

MY ATTORNEY AT NO TIME PETITIONED THE COURT FOR ME TO HAVE AN M.S.O. (MENTAL STATE OF OFFENDER) KNOWING THAT I WAS A M.H.M.R. PATIENT, ONLY AN "INADQUITE" COMPETENCY EXAM WAS GIVEN EARLIER.

D. GROUND FOUR: MY MENTAL CONDITION

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I FEEL THAT MY MENTAL CONDITION AT TIME OF PLEA CAUSED ME TO NOT UNDERSTAND THE CONSEQUENCES OF A GUILTY PLEA.

21. Relief sought in this petition: I WANT TO WITHDRAW MY GUILTY PLEA AND I WANT A TRIAL. I AM NOT GUILTY. OR A REVERSAL

22. Have you previously filed a federal habeas petition attacking the same conviction, parole revocation or disciplinary proceeding that you are attacking in this petition? ☐ Yes ☒ No  
If your answer is "Yes," give the date on which each petition was filed and the federal court in which it was filed. Also state whether the petition was (a) dismissed without prejudice, (b) dismissed with prejudice, or (c) denied.

If you previously filed a federal petition attacking the same conviction and such petition was denied or dismissed with prejudice, did you receive permission from the Fifth Circuit to file a second petition, as required by 28 U.S.C. § 2244(b)(3) and (4)? ☐ Yes ☐ No

23. Are any of the grounds listed in question 20 above presented for the first time in this petition?  
☒ Yes ☐ No

If your answer is "Yes," state briefly what grounds are presented for the first time and give your reasons for not presenting them to any other court, either state or federal.

GROUND 2 - WAS SENT IN AS AN AMENDMENT TO 1107

GROUND 3 - " "

GROUND 4 - " "

GROUND 5 - " "

24. Do you have any petition or appeal now pending (filed and not yet decided) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," identify each type of proceeding that is pending (i.e., direct appeal, art. 11.07 application, or federal habeas petition), the court in which each proceeding is pending, and the date each proceeding was filed.

25. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: \_\_\_\_\_

(b) At arraignment and plea: LUIS SOROLA - BROWNSVILLE, TX.

(c) At trial: \_\_\_\_\_

(d) At sentencing: LUIS SOROLA - BROWNSVILLE, TX.

(e) On appeal: \_\_\_\_\_

(f) In any post-conviction proceeding: \_\_\_\_\_



(g) On appeal from any ruling against you in a post-conviction proceeding: \_\_\_\_\_

**Timeliness of Petition:**

26. If your judgment of conviction, parole revocation or disciplinary proceeding became final over one year ago, you must explain why the one-year statute of limitations contained in 28 U.S.C. § 2244(d) does not bar your petition.<sup>1</sup>

N.A.

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<sup>1</sup> The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), as contained in 28 U.S.C. § 2244(d), provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
  - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Wherefore, petitioner prays that the Court grant him the relief to which he may be entitled.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for a Writ of Habeas Corpus was placed in the prison mailing system on

10-9-13

(month, day, year).

Executed (signed) on 10-7-13 (date).

Scott W. Hess

Signature of Petitioner (required)

Petitioner's current address: GARZA EAST UNIT-

4304 HWY 202

BEEVILLE, TX. 78102

\* SEE ANNEX  
5 PAGES

THREE

GROUND ONE:

Tropica Mental Health of Counsel

NO M.S.O. ORDERED

## FACTS SUPPORTING GROUND ONE:

The Attorneys did not submit a motion to the court. I have not mental health status evaluated at any time. (M). Although I informed both of them that I am a mental health patient, and that I have been on my medication for an extended period - Doctor says that Tropica Mental Health is Chouinard's law in my case. By way of <sup>me</sup> of their program in reporting that I was an entire year, before I could once again receive treatment at their facility.

I have a documented mental health history that began in 1982. And I have been listed as a mental outpatient since that time, taking psychotropic medication for my condition (now listed as Bipolar) / however I was not provided with a comprehensive diagnosis because both of my court appointed attorneys refused to file a motion for me receive one, by refusing to submit to the court full knowledge of my mental health status.

Because of their gross negligence the court did not acknowledge the fact that I was incompetent during the commission of my alleged offense. They furthermore asked the court to put me at a halfway facility, by not acknowledging my disability. And thereby negatively impacted my case.

(S)

FIVE  
GROUND TWO:

Deliberate Indifference shown to rights  
Conced by trial court: in a timely and meaningful manner.

## FACTS SUPPORTING GROUND TWO:

I was not provided with an  
attorney for 30 days, which impeded me from receiving  
a timely competency evaluation that would have clearly  
shown that I was not competent during the commission  
of my alleged offense. By not receiving legal representa-  
tion in a timely or meaningful manner, I was unable  
to properly present my case or make a valid statement  
(as layperson in my own behalf) that elicited me psycho-  
logically as well leading me to believe what I would  
not have adequate representation through court-appointed  
counsel. And in turn biased my judge/jury towards  
convicting me as guilty, in order to allow what I  
believed would be a harsher sentence. At the onset of  
liberty or interest by the court. I was unable to pre-  
sent a clear, concise argument and effectively did not  
counsel in providing a proper & substantial defense in my  
own behalf. The Court did not follow the law by allowing  
me to remain in Cameron County Jail without representa-  
tion to the court, which impacted my case adversely.

Person suffering from mental illness is guaranteed all rights, benefits, responsibilities and privileges afforded by State and Federal constitutions and laws. Vernon's Ann. Tx. Civ. St. art. 5547-80(a) including making one's own medical decisions

*Barclay v. Campbell*, 704 S.W. 2d 8

A state must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of due process clause. U.S.C.A. Const. Amend. 14

Due Process prevents Governments from interfering with rights implicit in the concept of ordered liberty. U.S.C.A. Const. Amend. 14.

Due Process contains a substantive component that bars certain arbitrary, wrongful Government actions regardless of the fairness of the procedures used to implement them. U.S.C.A. Const. Amend. 14

*non compos mentis*

*Rodriguez v. State* 899 S.W. 2d 658

cov. by

denied effective assistance of counsel 6th and 14th Amend.

\* Counsel failed to assist appellant in obtaining a comprehensive diagnosis and evaluation under the statutory scheme of the Texas Health and Safety Code for an administrative finding on the issue of mental illness

Appellant suffered from mental illness and counsel gave no notice of insanity defense

(over) →

2  
An essential requisite to successfully attacking a guilty plea on ineffective assistance grounds is that appellant must show the alleged deficiencies caused his plea to be unknowing and involuntary.

Counsel failed to request a mitigating instruction on (mental instability due to being off medication for an extended period of time).

## Notes

It is well established that in criminal trials, due process requires that Judge have no "actual bias against the defendant or interest in the outcome of his particular case." *Avilez v State of Texas*, 333 S.W. 3d 661, 673 (Tex. App. — Houston [1st Dist.] 2011, Pet denied. In other words, due process "will not permit judge to assume the role of a prosecutor."

Under Texas Rules of Appellate Procedure reversal is only required when appellant can show that an error "(1) Probably caused the rendition of an improper judgment; or (2) Probably caused the appellant from properly presenting the case to the court of appeals." Tex. R. App. P. 44.1(a)(2)

"The threshold requirement of any due process claim is the Government's deprivation of a Plaintiff's liberty or property interest." *Dupree v. Sanders*, 588 F.3d 282, 289 (5th Cir. 2009).

- \* "Due Process" at a minimum requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner.
- \* Not allowed to give (present) sworn testimony to court in my own behalf.

"What Process is due is measured by a flexible standard that depends on the practical requirements of the circumstances." *Id.*; *Mathews*, 424 U.S. at 334. Three factors included in flexible standard according to supreme court.

- "(1) the private interest that will be effected by the official action;
- (2) the risk of an erroneous deprivation of such interest through procedure used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

(OVER) →



4.

ANNEX

"(In addition to making a due process claim, a party must show that a due process violation occurred and that he or she was harmed by that violation.")

Tex. Civ. Prac. & Rem.

A Party's brief (writ) must contain a clear and concise argument for the contentions (grounds) made, with appropriate citations and ~~at~~ to authorities and records. Tex. R. App. P. 38.1(h)

★ Challenging constitutionality of court ruling due to Due Process Violations

- \* improprieties and biasedness of Judge
- \* Courts failure to acknowledge Mental Health Status
- \* Prejudiced by trial courts (Indifference to legal needs (3 mos to recieve attorney)   
 against

Denial of liberty of interest -  
I did not recieve legal representation at a meaningful time nor in a meaningful manner.

- ★ Court did not directly follow Texas Law requiremets  
MSO as protection of the Liberty of interest of defendant with a mental health history.
- \* Unlawful Conviction - MSO @ time of offense



Timeliness of Petition TIMELINESS OF PETITION  
 If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C.A § 2254 does not bar your petition

Sixth Amendment right to effective assistance of counsel

- \* due Process requires that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof - defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense.

Jackson v Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed 2d 560 (1979) (unconditional release with prejudice to reprosecution.)

Miranda Rights are protected under the 5th Amendment

Both 5th and 6th Amendments cover "right to counsel"

Unlawful Search 4th Amendment

Evidence was not legally sufficient to show that defendant recklessly acted in a way that as would support indecent exposure claim. Evidence did not support recklessness

~~Indictment for offense of ind. expose which alleged error that accused in committing offense. acted recklessly~~

2  
Ground  
(\*) U.S. vs. ALDRICH - STATES EVIDENCE OF PRIOR CRIMES IS PREJUDICIAL AND MAY NOT BE USED. CRIMINAL HISTORY AND EVEN ARREST HISTORY (NOT CONVICTIONS) WERE USED AGAINST ME DURING AICF BARGAIN PROCESS AND AT SENTANCING. INFLUENCING MY DECISION TO PLEAD GUILTY. (OVER) →

6

ANNEX

GROUND ONE

COUNSELS CONDUCT FELL BELOW A REASONABLE STANDARD OF COMPETANCE AND THERE IS REASONABLE PROBABILITY THAT THIS CAUSED ME TO NOT GO TO TRIAL AND TO PLEAD GUILTY. ALSO--THE ATTORNEY LIED TO ME AND TOLD ME THAT IF I WERE TO RECIEVE THE MAXIMUM SENTANCE, 10 YEARS, THAT HE WOULD BE THE ONE TO FILE MY APPEAL.

EX PARTE MOODY 991 S.W.2d 856

(TEX CRM. APP. 1999

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10-9-13

\$5<sup>00</sup> PAYMENT WAS SENT  
IN A SEPERATE BUSINESS  
ENVELOPE.

SCOTT HESS  
Scott W. Hess

SCOTT W. HESS  
TDCS # 01841004  
GARZA EAST UNIT  
4304 Hwy 202  
BEEVILLE, TX, 78109



01 100 50 DEK

UNITED STATES  
DISTRICT CLERK -  
FEDERAL BLDG. #  
600 E. HARRISON  
BROWNSVILLE, TX.